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IN THE APPELLATE DIVISION OF THE SUPERIOR COURT

IN AND FOR THE COUNTY OF CONTRA COSTA

COPY

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

) No. 128472-8

RAYMOND ANTHONY ELI,

Defendant.

)

REPORTER'S TRANSCRIPT OF PROCEEDINGS ON APPEAL

WALNUT CREEK JUDICIAL DISTRICT OF CONTRA COSTA COUNTY

JUDGE WILLIAM M. KOLIN, PRESIDING

DEPARTMENT NO. 18

FEBRUARY 5, 2007

A P P E A R A N C E S

FOR THE PEOPLE AND APPELLANT:

ROBERT J. KOCHLY

DISTRICT ATTORNEY

BY: _____

Deputy District Attorney

Contra Costa County

FOR THE DEFENDANT AND RESPONDENT:

REPORTED BY: DINA M. THOMPSON, C.S.R. NO. 9693

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2 FOR THE PEOPLE:

3 I.D. EVIDENCE

4 None in this volume.

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1 FEBRUARY 5, 2007

AFTERNOON SESSION⁶

2 P R O C E E D I N G S

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4
5 THE COURT: All right. Let's call Raymond
6 Anthony Eli, 128472-8.

7 Appearances for the record.

8 MS. LICHT: Jaime Licht for the People.

9 MS. GARRIDO: Diana Garrido for Mr. Eli.

10 THE COURT: Okay. Both parties ready to go?

11 MS. LICHT: Yes, your Honor.

12 MS. GARRIDO: Yes.

13 MS. LICHT: People would request though, before
14 we begin, to know the scope of the defense motion as
15 it was not provided in their actual moving papers.

16 THE COURT: How far do they need to go?

17 MS. GARRIDO: Yes. We were challenging only
18 reasonable suspicion for the stop.

19 MS. LICHT: Okay.

20 THE COURT: Okay. Call your first witness.

21 MS. LICHT: People call Officer Ingrassia.

22 THE COURT: Over here, Officer. Watch your
23 step as you step up. Remain standing when you get to
24 the witness chair. Face my clerk. Raise your right
25 hand to be sworn.

26 JASON INGRASSIA,

27 called as a witness by the People, being first
28 duly sworn by the Clerk, testified as follows:

1 THE CLERK: Please be seated. Please state
2 your name for the record and spell your name.

3 THE WITNESS: My name is Deputy Jason
4 Ingrassia, J-a-s-o-n, last name I-n-g-r-a-s-s-i-a.

5 THE COURT: Proceed.

6 DIRECT EXAMINATION

7 BY MS. LICHT:

8 Q. Good afternoon, Officer Ingrassia.

9 A. Good afternoon.

10 Q. Where are you employed currently?

11 A. With Contra Costa County Office of the
12 Sheriff.

13 Q. And on the night of or the early morning
14 rather of September 15th, 2006, were you working that
15 evening, early morning?

16 A. Yes.

17 Q. Where were you assigned?

18 A. I was assigned to the contract city of
19 San Ramon.

20 Q. Okay. Is that in Contra Costa County?

21 A. Yes.

22 Q. Did you make any traffic stops that
23 morning?

24 A. Yes.

25 Q. What -- did you make a traffic stop at
26 approximately 1:20 a.m.?

27 A. Yes.

28 Q. Can you tell us the circumstances of that

1 stop, please?

8

2 A. Yes. I was traveling westbound on Crow
3 Canyon Road near the intersection of San Ramon Valley
4 Boulevard. I had a green light. While I was
5 approaching, I noticed a Ford Mustang coming from
6 southbound San Ramon Valley Boulevard make a right
7 turn onto Crow Canyon Road without stopping at the
8 light. The light, like I said, from my traffic was
9 green, so I presumed that the light or the vehicle was
10 red.

11 Q. Did you effectuate a traffic stop at that
12 time?

13 A. I did.

14 Q. And did you approach the Mustang at that
15 point?

16 A. I did.

17 Q. Do you recall what the driver looked like
18 in that car?

19 A. I do.

20 Q. Do you see the driver of that car in the
21 courtroom today?

22 A. Yes.

23 Q. Can you please identify him for this
24 Court?

25 A. Gentleman in the yellow shirt at the
26 defense table.

27 THE COURT: Record reflect he's identified the
28 defendant.

1 MS. LICHT:

9

2 Q. Upon contacting the defendant, did you ask
3 for a driver's license, or what was your procedure?

4 A. I asked him to identify -- for
5 identification.

6 Q. Did he have a driver's license?

7 A. He gave me a California identification
8 card.

9 Q. Okay. Did you then ask the defendant if
10 he had a California driver's license?

11 A. I did.

12 Q. What did he tell you?

13 A. He told me it may be in the back of his
14 car.

15 Q. Was he able to locate that license?

16 A. I didn't ask him to actually locate it at
17 that point.

18 Q. What did you do next?

19 A. I asked him if he was -- if his license
20 was suspended, and that's why he actually gave me an
21 identification card.

22 Q. How did he respond to that?

23 MS. GARRIDO: Objection. Relevance.

24 THE COURT: Overruled.

25 MS. GARRIDO: Exceeds the scope of the hearing.

26 THE COURT: All right. I'll sustain it because
27 I think in fairness you asked her how far she was
28 going to go, and she indicated only to the point of

1 reasonable suspicion. I think that's what you said,¹⁰
2 Ms. Garrido. All right. Sustained.

3 MS. LICHT: Okay, your Honor.

4 Q. Moving back to the circumstances of the
5 stop. Was the defendant's failure to stop prior to
6 making the right turn a violation of a Vehicle Code
7 section?

8 A. Yes.

9 Q. Which section was that?

10 A. 21453(a).

11 Q. What does that Code section say?

12 A. It says you must stop --

13 Q. You can paraphrase that if necessary.

14 A. Okay. Thanks. It says you need to stop
15 at a red light before proceeding through an
16 intersection.

17 Q. What speed would you estimate the
18 defendant's car traveled through the right turn?

19 A. It was approximately seven to ten miles an
20 hour.

21 MS. LICHT: Nothing further at this time.

22 THE COURT: Cross?

23 CROSS-EXAMINATION

24 BY MS. GARRIDO:

25 Q. Good afternoon, Officer.

26 A. Hello.

27 Q. So you first saw Mr. Eli on San Ramon
28 Valley and Crow Canyon Road, correct?

1 A. Yes.

11

2 Q. And you were traveling westbound on Crow
3 Canyon?

4 A. Yes.

5 Q. And did you see -- could you see the
6 driver at that point?

7 A. No. I couldn't make out -- I assume there
8 was a driver, but I didn't focus on the driver.

9 Q. Okay. And according to your testimony, he
10 made a right turn without stopping, correct?

11 A. Correct.

12 Q. And he was about 100 to 150 feet in front
13 of you when that happened?

14 A. Correct.

15 Q. And you caught up with him on Crow
16 Canyon/Bollinger Canyon Road, correct?

17 A. No. That's where I made the traffic stop.

18 Q. Right. So that's where you eventually
19 stopped him?

20 A. That's correct.

21 Q. And so you were behind him actually for
22 about a mile before you pulled him over?

23 A. That sounds about right.

24 Q. You contacted Mr. Turner -- you contacted
25 him through the window, correct?

26 A. Mr. Who?

27 Q. I'm sorry. Mr. Eli.

28 A. What was the question?

1 Q. You contacted him through the window of 12
2 his vehicle?

3 A. Yes.

4 Q. And he asked you what you were pulling him
5 over for, didn't he?

6 A. I don't remember.

7 Q. And you said you were pulling him over for
8 speeding, didn't you?

9 A. I don't remember that.

10 Q. And do you remember him telling you he
11 couldn't have been speeding?

12 A. No.

13 MS. LICHT: Objection. Misstates testimony.

14 THE COURT: Overruled.

15 MS. GARRIDO:

16 Q. And then you said, "Well, you didn't stop
17 when you made that turn," correct?

18 A. I don't remember telling him.

19 Q. You don't remember telling him?

20 A. I don't remember the conversation at that
21 point.

22 Q. Do you remember telling him what you were
23 pulling him over for?

24 A. I don't remember specifically.

25 Q. Do you remember saying anything to him
26 when you initially stopped him?

27 A. I don't remember the specific words of
28 conversation that I had at the window.

1 Q. Okay. Do you recall him telling you that¹³
2 the light was red, so he must have stopped before
3 making that turn?

4 A. I don't remember.

5 Q. Do you recall having seen him smoking a
6 cigar?

7 A. I can't remember if I saw him smoking it
8 or if he told me that he had smoked it. I'm not sure
9 if I remember seeing him smoke one.

10 Q. Do you recall asking him what he was
11 smoking?

12 A. No.

13 MS. LICHT: Objection, your Honor. Goes beyond
14 the scope of defense motion.

15 THE COURT: No. Overruled.

16 MS. GARRIDO:

17 Q. Isn't it true that you've lied under oath
18 before, Officer?

19 MS. LICHT: Objection.

20 THE COURT: I think that's going a little bit
21 far afield. Do you have a good faith belief that
22 there is a basis for this? In other words, do you
23 have a transcript?

24 MS. GARRIDO: Yes, your Honor, I do.

25 THE COURT: All right. Let's show it to the
26 other side, and let me see it.

27 MS. LICHT: Your Honor, the People move to
28 exclude this line of questioning as irrelevant to this

1 particular case.

14

2 THE COURT: All right. Let me take a look at
3 this. I've been handed a reporter's transcript of
4 proceedings November 27th, 2006 of a 1538 that date
5 before Judge Treat, so is there a page number?

6 MS. GARRIDO: Your Honor, there are multiple
7 aspects throughout that hearing where the officer's
8 credibility was in question, so perhaps it might be
9 easiest to move to argument and judge's finding.

10 THE COURT: Okay. Where does the argument
11 begin?

12 MS. GARRIDO: I apologize. I don't have the
13 page number. I might be able to flip through it more
14 quickly if you would like me to.

15 THE COURT: Let me just take a look.

16 (Court reviews document.)

17 THE COURT: All right. Back on the record.
18 Page 61 at lines 5 through 8, is that what you're
19 referring to, the last paragraph of the transcript?

20 MS. GARRIDO: That was the judge's finding,
21 your Honor.

22 THE COURT: Did you see -- do you have a copy
23 of it?

24 MS. LICHT: I do, your Honor.

25 THE COURT: Page 61, lines 5 through 8.

26 MS. LICHT: I see that.

27 THE COURT: So what's the objection?

28 MS. LICHT: The objection is that it's not

1 relevant to this particular proceeding given the 15
2 reasoning behind the Court's statement that the
3 officer was trolling for drunk drivers. I believe
4 that has nothing to do with the issue at hand in this
5 case in this particular matter.

6 THE COURT: Well, you left out the last clause
7 of the sentence.

8 MS. LICHT: That he was picked on, this
9 defendant, because of his race.

10 THE COURT: Right. The defendant in the
11 current case is black.

12 MS. LICHT: I see that, your Honor. But I
13 believe that the officer's made a valid traffic stop
14 and stops people of all races, I'm sure, on a regular
15 basis, and the People have shown that it's for a valid
16 Vehicle Code violation and not as a result of the
17 defendant's race. As Officer Ingrassia has testified,
18 he couldn't even see the actual defendant in the car
19 when he pulled him over.

20 THE COURT: Well, the issue is, can Ms. Garrido
21 ask him -- you can ask him questions based on the
22 transcript within the limited area of establishing
23 attacks on his credibility, but I think the last
24 question was improper the way that it was stated.

25 So Derrik, would you give Ms. Garrido back her
26 transcript.

27 So the objection by the D.A. is overruled.

28 Continue, Ms. Garrido.

1 MS. GARRIDO: Thank you, your Honor. 16

2 Q. Officer, isn't it true that you have
3 engaged in racial profiling in the course of your
4 duties in the past?

5 A. No.

6 MS. LICHT: Objection.

7 THE COURT: And there was a very small
8 objection that was made by the D.A., which I'm going
9 to sustain. The issue about the credibility is one
10 that I'm willing to let you get into, but now we're
11 expanding it, and I understand the reason based on the
12 part of the transcript, but I think under 352 I'm
13 going to allow you to get into the specific issue of
14 the finding in that case as it relates to the
15 credibility of this witness.

16 So proceed. I will take judicial notice of
17 Judge Treat's finding and ruling in that case.

18 MS. GARRIDO: Thank you, your Honor. You want
19 me to only question the witness regarding
20 Judge Treat's finding in that case?

21 THE COURT: Well, okay. It's 20 minutes to
22 3:00. I think you made your point, Ms. Garrido, about
23 attempting to impeach this witness. You gave me the
24 transcript. I reviewed the transcript. I reviewed
25 the Court's ruling, and I've taken judicial notice of
26 it. So how much further do you want to go?

27 MS. GARRIDO: No further questions, your Honor.

28 THE COURT: All right. Anything further of

1 this witness?

17

2 MS. LICHT: Yes, your Honor.

3 REDIRECT EXAMINATION

4 BY MS. LICHT:

5 Q. Can you just tell this Court again,
6 Officer Ingrassia, why you pulled the defendant over?

7 A. I pulled him over because he committed a
8 violation of Vehicle Code Section 21453(a).

9 Q. Do you pull over -- do you pull people
10 over for multiple traffic violations on occasion?

11 A. Yes.

12 Q. Do you always detail every specific
13 violation in your reports? Say, for example, if --

14 MS. GARRIDO: Objection. Relevance.

15 THE COURT: No. Overruled. It goes to the
16 issue of credibility. Go ahead.

17 MS. LICHT:

18 Q. Just to clarify that question, defense
19 counsel referenced speeding and indicated you may have
20 pulled the defendant over for speeding or may have
21 told him that. If that was true, is it possible that
22 you would have neglected or decided not to include
23 that in your report, that violation?

24 A. Well, I may have thought he was speeding
25 but didn't have enough proof to put it in the report
26 because of a no radar.

27 MS. GARRIDO: Objection. This is purely
28 speculative, your Honor.

1 THE COURT: I'm going to sustain it again under
2 352. We need to move on. So if you have any redirect
3 that references the cross, proceed.

4 MS. LICHT: Nothing further, your Honor.

5 THE COURT: Okay. Anything else?

6 MS. GARRIDO: Nothing, your Honor.

7 THE COURT: All right. You can step down,
8 Officer.

9 All right. Any other witnesses or evidence?

10 MS. LICHT: No, your Honor.

11 THE COURT: Defense?

12 MS. GARRIDO: Defense calls Mr. Eli to the
13 stand.

14 THE COURT: Okay. Mr. Eli, if you'd step
15 forward to be sworn. When you get to the chair, if
16 you'd just raise your right hand to be sworn, sir.

17

18 RAYMOND ELI,

19 called as a witness by the Defense being first
20 duly sworn by the Clerk, testified as follows:

21

22 THE CLERK: Please be seated. Please state
23 your name for the record, and please spell your name.

24 THE WITNESS: Raymond Eli, R-a-y-m-o-n-d E-l-i.

25 THE COURT: All right. Proceed.

26 DIRECT EXAMINATION

27 BY MS. GARRIDO:

28 Q. Good afternoon, Mr. Eli.

1 A. How are you doing? 19

2 Q. So September 15th, 2006 at about 1:20 in
3 the morning, where were you?

4 A. Leaving the Sierra Hotel visiting my
5 cousin that was here on business.

6 Q. And were you in San Ramon?

7 A. Yes.

8 Q. And did you notice a police officer?

9 A. No, I did not.

10 Q. And what were you doing as you were
11 driving?

12 A. I proceeded out the hotel, made a right.
13 I came to the stop at San Ramon and Crow Canyon. This
14 is a big street, so I definitely had to make a stop
15 before I made the right turn. I proceeded to make the
16 right turn. I didn't notice the police officer at
17 least five blocks down until I seen him behind me.
18 Initially, I lit a cigar in my car. Then I --

19 Q. Let's try and take this a little bit by
20 little bit. When did you light the cigar?

21 MS. LICHT: Objection. Relevance.

22 THE COURT: No. Overruled.

23 MS. GARRIDO:

24 Q. Was it prior to making a turn?

25 A. No, it was not. It was after.

26 Q. Okay. So right after or how shortly
27 thereafter?

28 A. About five blocks down.

1 Q. And that's when you also noticed the
2 police officer? 20

3 A. Yes.

4 Q. Had you stopped fully before turning
5 through the intersection?

6 A. Yes.

7 Q. And is that because the light was red?

8 A. Yes.

9 Q. How long after you noticed the police
10 officer behind you until he pulled you over?

11 A. I noticed him at least five blocks down,
12 and I wasn't actually stopped until about ten blocks
13 down from the initial turning. If it was the fact
14 that I made the turn, didn't stop at the red light, I
15 should have been stopped within one or two blocks.

16 MS. LICHT: Objection. Nonresponsive.

17 THE COURT: Overruled. Ask your next question.

18 MS. GARRIDO:

19 Q. And after he pulled you over, did you ask
20 the officer anything?

21 A. I asked him why I was being pulled over.

22 Q. What did he tell you?

23 A. He told me I was speeding.

24 Q. Did you respond to that?

25 A. I told him I was not.

26 Q. And then what did he say?

27 A. He asked me for my license and
28 registration, which is true, I did tell him they may

1 be in the trunk. Gave him the California ID along 21
2 with my insurance.

3 Q. Did he give you another alternate
4 justifying for stopping you after you told him that
5 you weren't speeding?

6 A. Not at that point. He was gathering the
7 information. Then I asked him again that I was not
8 speeding, and he said, "Well, you didn't stop at the
9 red light." And I told him I did.

10 Q. Okay. And how are you so sure that you
11 did?

12 A. Because at Crow Canyon, that's a large
13 intersection. I mean, it's 1:00 o'clock, 2:00 o'clock
14 in the morning, of course, being. It's a major
15 highway, I mean major street, so it's not one of those
16 small two-lane streets. It's two, you know, two cars
17 on one side and two on the other, so it's a large
18 intersection. Common sense would say stop before you
19 make that right turn.

20 Q. Okay. Now, did the officer ask you about
21 your cigar?

22 A. He did.

23 Q. What did he say?

24 A. He asked me what did I light. I told him
25 it was a Black and Mild. He told me that it smelled
26 good before he walked away.

27 Q. Did he ask you -- so initially, did he ask
28 you what you were smoking?

1 A. He did.

22

2 MS. GARRIDO: Nothing further.

3 THE COURT: Cross?

4 MS. LICHT: Nothing, your Honor.

5 THE COURT: All right. You can step down, sir.

6 THE DEFENDANT: Thank you.

7 THE COURT: Any other evidence from the
8 defense?

9 MS. GARRIDO: No, your Honor.

10 THE COURT: All right. Argument?

11 MS. LICHT: Your Honor, Officer Ingrassia
12 testified that he --

13 MS. GARRIDO: I apologize, your Honor. I'm
14 sorry. Before we get -- I would like to move this
15 transcript into evidence.

16 THE COURT: Well, is it certified?

17 MS. GARRIDO: It has been. It is a copy, your
18 Honor, and it has been certified by Juanita Gonzalez,
19 the court reporter.

20 THE COURT: We'll mark it and admit it.

21 Certainly as it relates to anything that I've heard on
22 the last page, the Court has considered taking
23 judicial notice of it as the Court's ruling. I'm
24 sorry, go ahead.

25 (Defense Exhibit A was marked for
26 identification and admitted into evidence.)

27 MS. LICHT: That's okay. Officer Ingrassia
28 testified that he saw the defendant roll through a

1 right turn. Didn't make a complete stop. He was 23
2 going seven to ten miles per hour, and he presumably
3 pulled him over at a point which was safe to pull the
4 defendant over. Officer Ingrassia testified that he
5 could not see the actual defendant in the car at the
6 time he pulled him over or the time that he's on
7 Vehicle Code Section 21453 subdivision (a).

8 The People would request that the Court take
9 notice this was a valid stop and all evidence obtained
10 pursuant to that stop be admissible.

11 THE COURT: Thank you.

12 MS. GARRIDO: Your Honor, it's the defense
13 contention that Mr. Eli did in fact stop at this red
14 light prior to making a turn. His reasons for doing
15 so made perfect sense. I believe he has testified
16 credibly here before the Court. It doesn't make much
17 sense that the officer would pull Mr. Eli over and
18 then proceed to follow him for about a mile before
19 deciding then to pull him over for the traffic
20 violation at 1:30 in the morning when it would have
21 been very easy to pull him over directly after
22 observing him supposedly make this Vehicle Code
23 violation.

24 This officer has in the past been found by
25 Judge Treat to have engaged in racial profiling in the
26 course of his duties. Under Penal Code Section
27 13519.4, this is clearly illegal and impermissible
28 basis on which to stop somebody. And in fact, it

1 seems that the officer may have just been following 24
 2 behind Mr. Eli trying to see what he was doing,
 3 wondering what he was smoking, and then pulled him
 4 over to investigate further potentially based on his
 5 race.

6 Also, in the Bhatnagar case, the one which the
 7 Court has taken judicial notice of Judge Treat's
 8 ruling, implicit in that ruling was that the officer
 9 falsified the reason for the stop. Again, here this
 10 is the defense contention that the officer has
 11 falsified the reason for stopping Mr. Eli.

12 And under People v. Rodriguez, a 2006 case 143
 13 Cal.App.4th 1137, wherever an officer invents a reason
 14 for a stop, all subsequent evidence deriving from that
 15 stop must be suppressed regardless of whether the
 16 officer found other subsequent reasons to detain the
 17 suspect.

18 For those reasons, I would ask that the motion
 19 to suppress be granted.

20 THE COURT: I'm familiar with the case. Give
 21 me the transcript again, would you, Jennifer.

22 All right. I've heard the officer testify. I
 23 don't recall if he's testified in my court before. If
 24 he did, I don't remember. Certainly, Mr. Eli
 25 testified credibly as well and if all things were
 26 equal, obviously, it would be difficult enough as it
 27 is, but given the fact that Mr. Eli is
 28 African-American and at page 61 of the transcript,

1 Judge Treat where he indicates, "I do not credit the²⁵
2 officer's testimony. It appears to me as most
3 credible, that the officer was trolling for drunk
4 driving across from a bar and picked on this defendant
5 because of his race."

6 Now, I don't know what the race was of the
7 person involved in case 127484-4, but that's a pretty
8 significant finding.

9 I don't agree with your general comment,
10 Ms. Garrido, that he made a specific finding about
11 racial profiling. I didn't see it, but regardless in
12 terms of credibility, I'll find that the motion should
13 be granted. The motion is granted. Case is dismissed
14 on the Court's own motion.

15 (Whereupon, the proceedings were concluded.)

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1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF CONTRA COSTA)
4
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26

6 I, DINA THOMPSON, do hereby certify:

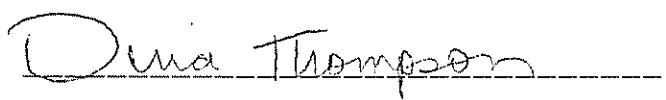
7 That I am a Certified Shorthand Reporter of the
8 State of California; that I was duly appointed
9 shorthand reporter by the above-named Court in the
10 foregoing entitled Court and cause;

11 That on the 5th day of February, 2007, I fully,
12 truly, and correctly took down in shorthand writing
13 all of the proceedings had and all of the testimony
14 given in said Court and cause at the hearing in said
15 matter;

16 That I thereafter fully, truly and correctly
17 transcribed the same into typewriting; that the
18 foregoing pages 1 through 25 is a full, true and
19 correct transcript of my shorthand notes taken at said
20 hearing and at the time and place therein named.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 this 9th day of February, 2007.



23
24
25 
26
27 DINA M. THOMPSON, CSR NO. 9693
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